
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 672 **Hearing Date:** July 14, 2015
Author: Jones-Sawyer
Version: June 1, 2015
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Inmates: Wrongful Convictions: Assistance Upon Release*

HISTORY

Source: California Attorneys for Criminal Justice

Prior Legislation: AB 2308 (Stone) – Chapter 607, Statutes of 2014
SB 618 (Leno) – Chapter 800, Statutes of 2013

Support: Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotics Officers Association; Los Angeles Police Protective League; Riverside Sheriffs Association

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this legislation is to require the California Department of Corrections and Rehabilitation (CDCR) to provide transitional services to wrongfully convicted persons upon their release, as specified.

Existing law requires CDCR and the Department of Motor Vehicles (DMV) to ensure that all eligible inmates released from prison have valid identification cards issued. (Penal Code § 3007.05.)

Existing law requires CDCR to establish a case management reentry pilot program for offenders who are likely to benefit from case management reentry strategies designed to address homelessness, joblessness, mental disorders, and developmental disabilities among offenders transitioning from prison into the community. (Penal Code § 3016.)

Existing law requires the court to inform a person whose conviction has been set aside based upon a determination that the person was factually innocent of the charge of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims. (Penal Code § 851.86.)

Existing law states that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the Victim Compensation and Government Claims Board (VCGCB). Upon application the VCGCB shall, without a hearing, recommend to the Legislature that an appropriation be made. (Penal Code § 851.865.)

Existing law provides that any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for the reason that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her, or who, being innocent of the crime with which he or she was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he or she was imprisoned, may, as specified, present a claim against the state to the VCGCB for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment. (Penal Code § 4900.)

Existing law gives erroneously convicted and pardoned individuals two years to file a claim against the state. (Penal Code § 4901.)

Existing law sets the rate of compensation at \$100 per day of incarceration served subsequent to the claimant's conviction, and specifies that this appropriation shall not be considered gross income for state tax purposes. (Penal Code § 4904.)

This bill requires CDCR to provide transitional services to a wrongfully convicted person, including housing assistance, job training, and mental health services, as applicable.

This bill states that the extent of the services is to be determined by CDCR.

This bill specifies that the services shall be provided for a period of not less than six months and not more than one year from the date of release.

This bill prohibits charging a fee for the application of an original, renewal, or replacement driver's license or identification card issued to any wrongfully-convicted person released from prison or county jail within the previous six months.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.” (Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for Legislation

According to the author:

Wrongful convictions are occurring with more frequency in our criminal justice system. With the technological developments of DNA evidence, and a growing number of Innocence Projects throughout the country, persons wrongfully convicted of crimes are receiving a second chance at life. According to an LA Times special report, the number of people exonerated each year in the United States has nearly tripled over the last two decades. A total of 1,493 wrongfully convicted inmates have been set free since the first DNA tests in 1989.

However, after sometimes decades in prison a wrongfully convicted person is released from detention, they are released back into the community without any compensation or reentry services. By contrast, parolees often receive assistance with various necessities such as food and clothing vouchers, benefits, job training and housing placements. Yet, for wrongfully convicted persons, they are released without such basic necessities.

For example, in 2011, Obie Anthony, after being wrongfully convicted, was released from detention after spending 17 years in prison. During his court case in 1994, the prosecution failed to disclose that the key witness had received a “deal” with the prosecutor in exchange for the testimony. The witness eventually recanted and Mr. Obie was released from custody. Mr. Obie was released with the clothes on his back and a few dollars in his pocket, despite being in prison for 17 years.

Mr. Anthony was the inspiration for this bill. If it was not for his loving family who helped him to readjust after prison, he would probably not be here today.

2. California Commission on the Fair Administration of Justice Report and Recommendations

A 2008 report by the California Commission on the Fair Administration of Justice addresses some of the obstacles faced by persons who have established their innocence after conviction of a crime in gaining access to post-conviction relief, achieving reintegration into society, and gaining compensation for their wrongful convictions. As to reintegration in particular, the report states:

Ironically, even the limited resources made available to convicted felons who have served their sentences and are released from prison are not available to those whose convictions have been set aside. Parolees are released to the community in which they were arrested or convicted; services such as counseling and assistance in locating housing or jobs are limited to those who remain under parole supervision. But those who are being released because their conviction is set aside, including those who have been found innocent, receive none of these services. Those who have been released back into the community after successfully challenging their convictions, whether innocent or not, face the same obstacles encountered by parolees, and more. Many are afflicted with post-traumatic stress disorder, or other psychological damage resulting from their wrongful incarceration over a long period of time. Of the States with compensation laws, only three – Massachusetts, Louisiana and Vermont – provide for the costs of medical and psychological care. The New York Times recently gathered information on 137 of the 206 imprisoned individuals who have been found innocent by DNA testing from 1989 through 2007. The reporters also researched the compensation claims of all 206. They found that at least 79 of these persons (40%) received no compensation at all. More than half of those who did receive compensation waited two years or longer after exoneration for the first payment. Few received any government services after their release. They typically left prison with less help – prerelease counseling, job training, substance-abuse treatment, housing assistance and other services – than some states offer to paroled prisoners. Most found that authorities were slow to wipe the convictions from their records, if they did so at all. Even those who were well educated and fully employed at the time of their wrongful conviction had difficulty finding work after their release. Roberts & Stanton, *A Long Road Back After Exoneration, and Justice is Slow to Make Amends*, New York Times, Nov. 25, 2007; Santos & Roberts, *Putting a Price on a Wrongful Conviction*, New York Times, Dec. 2, 2007.

The Commission recommends that services to assist with reintegration into society be available to all those released from prison after their judgment of conviction has been reversed, vacated or set aside. This would include assistance in locating housing, a cash allowance, clothing, and employment counseling.

(Report and Recommendations on Remedies, California Commission on the Fair Administration of Justice , pp. 6-8, <http://www.ccfaj.org/documents/reports/incompetence/official/REPORT%20AND%20RECOMMENDATIONS%20ON%20REMEDIES.pdf> .)

This legislation helps to implement these recommendations by requiring CDCR to provide transitional services to a wrongfully convicted person, including housing assistance, job training, and mental health services, the extent of which will be determined by CDCR.

3. Argument in Support

According to the California Attorneys for Criminal Justice, the sponsor of this bill:

Wrongful convictions are sadly becoming more frequent in our criminal justice system. With the technological developments of DNA evidence, and a growing number of Innocence Projects throughout the state, persons convicted and incarcerated of crimes they did not commit are receiving a second chance at life. According to an LA Times special report, the number of people exonerated each year in the United States has nearly tripled over the last two decades, according to the National Registry of Exonerations. A total of 1,493 wrongfully convicted inmates have been set free since the first DNA tests in 1989.

However, once a person is released from state prison as wrongfully convicted, they are released back into the community without any compensation or reentry services. By contrast, parolees often receive assistance with various necessities such as food and clothing vouchers, benefits, job training and housing placement. For persons released after being wrongfully convicted and incarcerated, these persons are released without such necessities, identification cards or drivers licenses, because they are no longer in custody of the state.

According to the University of Michigan's National Registry of Exonerations, which provides detailed information about every known exoneration in the United States since 1989, has documented the exonerations in California. Since 2010, 24 persons have been exonerated in California – an average of just under 5 exonerations per year. In 2010 and 2014, there were only two exonerations. Although not many people would be affected by the bill, this will help those that deserve assistance.

In 2011, Obie Anthony spent 17 years in prison after being wrongfully convicted when it was uncovered that a prosecutor failed to disclose that the key witness had received a “deal” with the prosecutor in exchange for the testimony. The witness eventually recanted and Anthony was released from custody. Obie was released only with the clothes on his back, a few dollars in his pocket, and somehow expected to successfully transition back into the community.

The criminal justice system stole precious years from Obie; it is an unfortunate reality of our criminal just system that no services are provided to help Obie, and others wrongfully convicted. Although there is a compensation process, it takes months or years to receive compensation. The critical reentry time is the first few days and weeks upon release. The California Department of Corrections and Rehabilitations should, at the very least, provide essential reentry services to persons wrongfully convicted.

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